IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.16376 of 1999 & 20 connected cases

Davender Kumar and others

..... Petitioners

Vs.

State and others

..... Respondents.

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Date of decision: **January 31, 2007**

Present: Mr.Ashok Bhardwaj Advocate and
Mr.R.S.Ponghal, Advocate in CWP No. 16376 of 1999
Mr.Sushil Jain Advocate in CWP No. 9288 of 2000
Mr.Vinod Bhardwaj Advocate in CWP No. 9567 of 2000
Mr.R.K.Malik, Advocate in CWP No. 18052 of 1999
Mr.S.K.Kaliramna Advocate in CWP No. 12999 of 1999
Mr.Sushil Jain Advocate in CWP No. 6236 of 2001
Mr.Sushil Jain Advocate in CWP No.640 of 2000
Mr.Suman Jain, Advocate in 8236 of 2001
Mr.D.S.Patwalia, Advocate in CWP No.4493 of 2000
Mr.D.S.Malik, Advocate in CWP No. 4429 of 2006
Mr.D.S.Malik, Advocate in CWP No. 9777 of 2006
Mr.P.C.Chaudhary, Advocate in CWP No. 9936 of 2006
Mr.Akshay Bhan, Advocate in CWP No. 13719 of 2006
Mr. R.S.Tacoria, Advocate in CWP No. 3820 of 2006
Mr.R.S.Sangwan, Advocate in CWP No. 10657 of 2006
Mr.R.K.Hooda, Advocate in CWP No. 10799 of 2006
Mr.R.S.Rana, Advocate in CWP No.10330 of 2006
Mr.R.KHooda, Advocate in CWP No. 10786 of 2006
Mr.Balkar Singh, Advocate in CWP No. 10242 of 2006
Mr.R.K.Hooda, Advocate in CWP No. 11586 of 2006
Mr.R.K.Hooda, Advocate in CWP No. 11772 of 2006

Mr. Jitender Chauhan, Addl. Advocate General, Haryana

for the respondents-State.

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JUDGMENT

M.M.Aggarwal, J.

This judgment shall dispose of Civil Writ Petition Nos.16376 of 1999, 9288 of 2000, 9567 of 2000, 18052 of 1999, 12999 of 1999, 6236 of 2001,640 of 2000, 8236 of 2001and 4493 of 2000 filed by the petitioners, who had been selected as Gram Sachivs and Civil Writ Petition Nos. 4429, 9777, 9936,13719,3820,10657,10799,10330,10786,10242, 11586, and 11772 of 2006 filed by petitioners, who had been appointed as Gram Vikas Sahayaks and whose services had been terminated.

The Haryana Subordinate Services Selection Board had advertised 414 posts of Gram Sachivs in the Department of Development and Panchayats vide Notification copy Annexure P-3 published on 22.2.1997. Written examination was conducted on 7.2.1999, interviews held in June 1999 and result was declared vide copy Annexure P-4 for the post of Gram Sachivs. However, no appointment letters were issued. Some of the persons who had been selected, had served legal notices. Thereafter various writ petitions were filed by the candidates so selected but not appointed to the posts of Gram Sachivs.

It appears that Government had taken a decision to abolish Octroi in the State of Haryana with effect from 1.11.1999 and then all employees working in collection of octroi tax in Municipal Committees were to be absorbed and it was decided that they be adjusted against the existing vacancies in different Departments of State Government,/State Public Undertakings/Corporations, Boards etc. in time bound manner and, as such, all

the requisitions placed by the Government Departments with the Haryana Staff Selection Commission/Employment Exchanges in respect of recruitment of Group 'C' and Group 'D' posts were withdrawn vide Government letter dated 12.11.1999. This was communicated by the Director of Panchayats, Haryana to The Haryana Staff Selection Commissioner, Chandigarh on 19.11.1999 with the request that the posts of Gram Sachivs sent by the Department stood withdrawn.

Sections 14 and 15 of the Haryana Panchayati Raj Act, 1994 originally provided and applicable in 1999, are reproduced as under:

14.Appointment of Gram Sachivs.

There shall be a Gram Sachiv for every Gram Panchyat or group of Gram Panchayats who shall be appointed by Government.

15.Duties of Gram Sachiv

(1)It shall be the duty of the Gram Sachiv to -

(i) Maintain accurate and up-to-date entries in accounts, record and other property of the Gram Panchayat under the general supervision of the Sarpanch and to assist the Gram Panchayat in the discharge of its duties and functions under this Act or under any other law for the time being in force;

(ii) assist in carrying out the resolutions of the Gram Panchayat;

(iii) Perform such other duties as may be prescribed.

(2) A Gram Sachiv, subject to the control of the Sarpanch -

(a) after recording the proceedings, shall append his signatures in the proceeding book.

(b) shall prepare the replies of audit notes and s submit the same to the Block Development and Panchayat Officer after approval of the Gram Sabha, within one month of the receipt of such notes; and

(c) shall sign daily balances in cash book."

During the pendency of the writ petitions, Sections 14 and 15 of the Haryana Panchayati Raj Act, 1994 were amended and were substituted vide Haryana Act, No. 14 of 2003, which reads as under:

"14. Appointment of Gram Vikas Sahayak.- (1) For each Gram Panchayat there will be an office of Gram Vikas Sahayak which will be filled up on such terms and conditions and in such manner as may be prescribed. Gram Vikas Sahayak shall assist the

Gram Panchayat and perform such other duties as may be assigned by the Gram Panchayat or prescribed by the Government. He will also act as a link between the Gram Panchayat and the Government and will assist in effecting recoveries of dues relating to Government or State enterprises on commission basis which shall be determined by the Government from time to time. He will be paid such honorarium by the Gram Panchayat as may be prescribed.

(2)Gram Vikas Sahayak shall not be an employee of the Government and consequently he shall have no claim for regular pay scale or benefit of service conditions as applicable in case of Government servant or for any type of post retiral benefits.

15. Appointment of Circle Supervisors for a Group of Gram Panchayats. -- For a group of Tram Panchayats there may be a Circle Supervisor from amongst the existing Gram Sachivs to supervise the work of Gram Vikas Sahayaks and to discharge such other duties and perform such other functions as may be assigned to him by the Gram Panchayat or by the Government from time to time or as may be prescribed. The groups of Gram Panchayat shall be formed in the manner prescribed."

Then amending Act of 2003 was amended again by Haryana Act No.7 of 2006 and Sections 14 and 15 were re-substituted as under:

> "14 Appointment of Gram Sachivs.- There shall be a Gram Sachiv for every Gram Panchayat or group of Gram Panchayat, who shall be appointed by Government.
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> 15. Duties of Gram Sahivs – (1) It shall be the duty of the Gram Sachiv to -
>
> (i) maintain accurate and up-to-date entries in accounts record and other property of the Gram Panchayat under the general supervision of the Sarpanch and to assist the Gram Panchayat in the discharge of tis duties and functions under this Act or under any other law for the time being in force.
>
> (ii) Assist in carrying out the resolutions of the Gram Panchayats; and
>
> (iii)perform such other duties as may be prescribed.
>
> (2)A Gram Sahiv, subject to the control of the Sapanch -
>
> (a) after recording the proceedings, shall append his

signatures in the proceeding book;

(b) shall prepare the replies of audit notes and submit the same to the Block Development and Panchayat Officer after approval of the Gram Sabha, within one month of the receipt of such notes and

(c) Shall sign daily balance in cash book"

In this amending act No.7 of 2006, which came into being w.e.f.17.1.2006, it had been provided that the office of Gram Vikas Sahayak created under the Haryana Panchayati Raj (Amendment)Act, 2003 i.e. Haryana Act 14 of 2003, shall stand abolished and consequently the incumbent of the said office shall forthwith stand relieved of his duties.

Thereafter another bunch of petitions were filed in the year 2006 by a large number of Gram Vikas Sahayaks who had been recruited and then were relieved from the posts in view of the amending Act of 2006.

During the course of arguments, it was stated on behalf of the State that at the relevant time i.e. in the year 1999, 636 posts of Gram Sachivs were available and these were all filled by 24.12.1999 from Octroi Surplus Staff and then no post was available and then a decision was taken that the cadre of Gram Sachivs be declared a diminishing cadre and no appointment be made on this cadre.

However, a letter written by Joint Director Panchayat dated 18.2.2000 had also been shown that 90 posts of the Gram Sachivs were lying vacant at that time. Another letter which was a request sent by the Director

Panchayat, Haryana, Chandigarh to Secretary, Haryana Staff Selection Board, Panchkula dated 8.9.2006 was shown that 621 posts of Gram Sachivs were available now and eligible candidates be selected for the posts which may be subject to decision of Civil Writ Petition 16376 of 1999.

By amending Act 2003, whereby posts of Gram Vikas Sahayaks were created, it had been provided that there shall be one Gram Vikas Sahayak for each of the Panchayat. It was further provided therein that there may be Circle Supervisors for a Group of Gram Panchayats. They will be appointed from the existing Gram Sachivs. It was also stipulated that Gram Vikas Sahayaks will be paid honorarium of Rs.3000/- by the Panchayat concerned.

It comes out that there are more than 6000 Panchayats in Haryana. About 1800 -1900 Gram Vikas Sahayaks were appointed. Then Remuneration was reduced from Rs.3000/- to Rs. 1/- only. Many had left the job and many had filed some writ petitions against that order of reduction of remuneration, which are stated to be pending.

It had been argued that Gram Sachivs, who had been selected in the year 1999, were not appointed because there was change of Government at that time. It had further been argued that the amending Act of 2006 was passed to remove the Gram Vikas Sahayaks, appointed during the regime of the previous Government.

Counsel in the writ petitions filed by Gram Vikas Sahayaks had argued that amending Act of 2003 was passed to provide better secretarial assistance to the Gram Panchayats and every Gram Panchayat was to have Gram Vikas Sahayak and that passing of amending Act of 2006 was mala fide.

Counsel for the parties had relied on judgments reported as **Avas**

Vikas Sansthan and another Vs. Avas Vikas Sansthan Engineers Assn and others (2006) 4 Supreme Court Cases 132, Girish Arora Vs. State of Haryana (P&H)(DB) 1997 (3) S.C.T. 240, State of Haryana and another Vs. Rajinder Kumar and others 1990(5) SL 788, Jarnail Singh Vs. State of Punjab (P&H) (DB) 1997 (2) S.C.T.764 and State of Haryana and others Vs. navneet Verma (DB) 2004(5) SLR 242.

It is true, in this case, no appointment letters had been issued to the persons selected as Gram Sachivs nor they had joined the posts and mere selection did not confer any right. Further from the amending Act of 2003, it would come out that Gram Vikas Sahayak was not to be an employee of the State Government and he had to have no claim in regular pay scales etc. and there was to be a Gram Vikas Sahayak for each Panchayat. It was argued on behalf of the State that many Panchayats were not in a position to pay the honorarium. This is supported by the fact that only 1800 -1900 were appointed whereas there are more than 6000 Panchayats.

The post of Gram Sachiv is a post existing on the cadre of Department of Development and Panchayats Haryana State.

Amending Act of 2003 which had amended Sections 14 and 15 of the Haryana Panchayati Raj Act, 1994 and had created the office of Gram Vikas Sahayak, did not create any cadre of Gram Vikas Sahayaks, which will be the responsibility of the State Government to maintain. They were just to work only on honorarium. If there had been difficulties in implementing the provisions as far as office of Gram Vikas Sahayak was concerned and then the amending Act is passed in the year 2006 bringing the provisions of the old Act regarding Gram Sachivs in operation, which led to the abolition of posts of

Gram Vikas Sahayaks and relieving them from the duties, it cannot be said that this Act of the respondent-State was, in any way, arbitrary/mala fide especially when Gram Vikas Sahayaks were not the employees of the State Government and they were just to work on honorarium.

It may be that in the year 1999, persons selected by the Haryana Subordinate Services Selection Board as Gram Sachivs could not be appointed as Haryana State had abolished Octroi w.e.f. 1.11.1999 and had proposed to absorb the surplus staff working for the Octroi in various Municipal Committees, still it is a fact that various writ petitions had been filed in the years 1999 and 2000, which remained pending till this date and by this time, more than 600 posts of Gram Sachivs are available and are to be filled by way of new selection by the Haryana Subordinate Services Selection Board. It cannot at all be said that Gram Sachivs selected by way of duly conducted process in the year 1999, were at fault, in any way. A large number of them had filed writ petitions in this Court, which have remained pending and now time has come when the respondent-State have again proposed to fill up the posts now available, which are more in number than the persons so selected in the year 1999.

No defect has been pointed out as far as selection process for the posts of Gram Sachivs in the year 1999, is concerned.

In the facts and circumstances of the case, it would be appropriate that the candidates selected for the posts of Gram Sachivs in the year 1999 be first absorbed now against available vacancies and then the remaining available posts be filled by further selection process.

The contention of the State Counsel that during this time many

more persons would have become eligible and many of the selected candidates might have become over-age, cannot be given much weight as the persons already selected were not at fault and if many new persons have become eligible, they can always compete for the remaining posts.

From the above discussion, the civil writ petitions filed by the persons, who were working as Gram Vikas Sahayaks and have been relieved in view of the amending Act of 2006, are dismissed.

The writ petitions filed by the candidates selected as Gram Sachivs in the year 1999 are allowed and it is directed that candidates selected for the posts of Gram Sachivs in the year 1999, be first absorbed as Gram Sachivs and then the remaining available posts be filled by further selection process. The appointment letters to these persons shall be issued as per select list prepared by the Haryana Subordinate Services Selection Board in the year 1999. They shall get pay only from the date they join on the post of Gram Sachivs and shall have no claim of the back seniority or pay. Needful be done within a period of three months.

The respondents-State may further start selection process of the posts of Gram Sachivs, but that shall be for the remaining vacant posts, after absorbing the persons selected in the year 1999.

(M.M.Aggarwal)
Judge

January 31, 2007
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